

**ANNUAL REPORT  
OF THE  
ENVIRONMENTAL QUALITY  
SERVICE COUNCIL**



**Indiana Legislative Services Agency  
200 W. Washington Street, Suite 301  
Indianapolis, Indiana 46204**

**November, 2001**

# INDIANA LEGISLATIVE COUNCIL

## 2001

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Bernadette Bartlett  
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A copy of this report is available on the Internet. Reports, minutes, and notices are organized by committee. This report and other documents for this Committee can be accessed from the General Assembly Homepage at <http://www.state.in.us/legislative/>.

## **I. STATUTORY AND LEGISLATIVE COUNCIL DIRECTIVES**

The Indiana General Assembly enacted P.L. 248-2001 (SEA 121) directing the Environmental Quality Service Council (EQSC) to do the following:

- (1) Advise the Commissioner of the Indiana Department of Environmental Management (IDEM) on policy issues decided upon by the EQSC.
- (2) Review the mission and goals of IDEM and evaluate the implementation of the mission.
- (3) Serve as a council of the General Assembly to evaluate:
  - (A) resources and structural capabilities of IDEM to meet IDEM's priorities; and
  - (B) program requirements and resource requirements for IDEM.
- (4) Serve as a forum for citizens, the regulated community, and legislators to discuss broad policy directions.
- (5) Submit a final report to the Legislative Council that contains:
  - (A) an outline of activities of the EQSC;
  - (B) recommendations for any IDEM action; and
  - (C) recommendations for any legislative action.

The Legislative Council assigned the following additional responsibilities to the EQSC:

- (1) Review environmental efforts that are fully or partially funded by the state with respect to resource recovery, pollution prevention, clean manufacturing, recycling, non-point source pollution, and other environmental issues.
- (2) Review environmental crimes issues.
- (3) Review recycling issues.
- (4) Review wastewater and drinking water revolving fund issues.
- (5) Review the impact of increased levels of outdoor lighting ("Light pollution").

## **II. INTRODUCTION AND REASONS FOR STUDY**

The activities of the EQSC in 2001 were conducted to discharge the EQSC's various responsibilities under P.L. 248-2001 (SEA 121) and other acts imposing responsibilities on the EQSC.

## **III. SUMMARY OF WORK PROGRAM**

The EQSC met five times on the following dates and at the following locations:

<b>Date</b>	<b>Location</b>	<b>Topic(s) Discussed</b>
1. Aug. 7, 2001	State House, Room 233 200 W. Washington St. Indianapolis, Indiana	Air issues, groundwater rule, TMDL's and other water issues, and 2001 agenda

2. Sept. 4, 2001	Conference Rooms 4&5 402 W. Washington St. Indianapolis, Indiana	Wetlands issues, Water Data Task Force
3. Sept. 28, 2001	Senate Chambers State House 200 W. Washington St. Indianapolis, Indiana	Septic systems issues, environmental crimes, light pollution
4. Oct. 15, 2001	Senate Chambers State House W. Washington St. Indianapolis, Indiana	Indiana wastewater and drinking water revolving funds, technical 200 assistance issues, recycling issues
5. Oct. 30, 2001	Conference Room C Governmental Center South 402 W. Washington St. Indianapolis, Indiana	Air pollution issues, recommendations for inclusion in final report

#### **IV. SUMMARY OF TESTIMONY**

##### **First Meeting - August 7, 2001**

**Commissioner's Report.** Tim Method, Deputy Commissioner, IDEM, gave the commissioner's report on the current status of department activities.

Mr. Method commented on the timing of issuance of NPDES permits, and reviewed recent personnel changes at IDEM. He indicated that IDEM has been working with municipalities and citizen groups to finalize long term control plan guidance and use attainability analysis guidance, and is close to completion of the project. Mr. Method also commented on issues related to the recent United States Supreme Court decision on wetlands, Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers, 531 U.S. 159 (2001) (SWANCC). IDEM has also recently provided information to municipalities concerning stormwater requirements. IDEM is meeting with a group of public water suppliers to develop guidelines for drinking water systems.

**NOx Issues.** Mr. Method and Roger Letterman of IDEM gave an air issues update, focusing on the recently adopted rule of the Air Pollution Control Board on NOx emissions reductions and reduction of regional ozone transport. The report cited: (1) the requirement for statewide reduction of NOx emissions of 31% by 2007; (2) the control measures that must be in place by May 31, 2004; (3) the applicability of the rule only during the ozone season; (4) the regional

emissions cap and trade program administered by the U.S. Environmental Protection Agency (EPA); and (5) the similar rules under development or in place in twenty-two states in the eastern U.S.

Mr. Method commented on: (1) the programs currently in place for control of emissions of various elements; (2) the consistency of Indiana's NO<sub>x</sub> proposal with the federal model and proposals by other states; (3) the applicability of the rule to existing power plants and to new construction; (4) similar rules in other states; (5) the applicable percentage of NO<sub>x</sub> reductions; and (5) the potential impact of a recent federal proposal concerning the division of environmental enforcement responsibilities between the states and EPA.

**Groundwater Issues.** Mr. Method and Patrick Carroll of IDEM made a presentation on groundwater protection and the proposed groundwater rule. They contrasted existing protections to those applicable to surface water and air, and reviewed the various programs in place in Indiana to protect or clean up groundwater. They discussed: (1) the background of the development of the proposed rule; (2) the standards established in the proposed rule; (3) the criteria for application of the standards; (4) the concerns of citizen groups and the regulated community about the proposed rule; (5) common misunderstandings about the proposed rule; (6) issues about which there is generally a consensus; and (7) how the standards will be used if the proposed rule is adopted. Mr. Method commented in support of the changes to the proposed rule suggested by Sen. Simpson and Rep. Kruzan. Mr. Hayden explained his concern that the proposed rule does not adequately recognize the interplay between groundwater and stream water quality, especially in low flow situations, and the possibility that streams can be contaminated by an inflow of contaminated ground water. Sen. Simpson commented that it would be useful for the EQSC to receive reports from agencies as rules are promulgated that implement the groundwater standards. Mr. Method indicated that it could be two years or longer before the other agencies complete promulgation of such rules.

**TMDL Issues.** Cyndi Wagner of IDEM made a presentation on the progress of the Total Maximum Daily Load (TMDL) Workgroup. She described the activities of the WPCB pursuant to P.L. 140-2000 (SEA 431) to establish policies and rules to govern the implementation of TMDL requirements of Section 303(d) of the Clean Water Act. As directed by P.L. 140-2000, IDEM has appointed a working group of stakeholders with respect to the implementation of TMDL requirements. The working group has met monthly since October, 2000, has established subcommittees, and expects to complete its work by March, 2002. IDEM will complete TMDL rulemaking by October 1, 2003. EPA promulgated its rules in July, 2000, and Congress has prohibited EPA from putting the rules into effect by denying funding for that purpose. The rules have also been challenged in court, and EPA in response to the court challenges has extended until 2003 its consideration of the rules for possible revision. This extension complicates the WPCB's efforts to promulgate a rule.

## **Second Meeting - September 4, 2001**

**Commissioner's Report.** Commissioner Kaplan gave her report on the current status of IDEM activities.

Commissioner Kaplan indicated that IDEM will consider adjusting the manner in which administratively extended NPDES permits are addressed in IDEM's Permits Report Card, and commented concerning the length of extensions and the manner in which major permits are addressed in the Permits Report Card.

**Wetlands Issues.** Tim Method described the rulemaking process on wetlands by the Water Pollution Control Board (WPCB). Mr. Method noted IDEM's position on the effect of SWANCC, and noted that IDEM believes the necessary authority to adopt rules to address regulation of waters no longer subject to federal jurisdiction under SWANCC exists in current statutes and rules. Waters no longer subject to federal jurisdiction under SWANCC are still considered by IDEM to be waters of the state subject to Indiana water quality standards, and IDEM has created a wetland NPDES program to regulate such waters. IDEM has proposed that this NPDES program be replaced by a surface water modification permit program. The new program is modeled after other states' programs that combine water quality certification under Section 401 of the Clean Water Act with state wetlands programs. The new program will mirror the Section 401 program. The amended proposed rule will be presented to the WPCB this winter for final adoption next spring.

James Robb, IDEM, addressed SWANCC. He concluded that isolated waters are unevenly distributed in the state, that the effects of SWANCC will depend largely on federal interpretation and states' reactions, and that significant numbers (85%) and area (31%) of Indiana's waters could be removed from federal jurisdiction by SWANCC.

Larry Kane, Bingham Summers Welsh & Spilman, spoke on behalf of the Coalition on Wetlands Issues (Coalition). Mr. Kane described the Coalition's membership and philosophy, and outlined the wetlands rulemaking process. The Coalition, created in opposition to the draft wetlands rule, has drafted and presented to the WPCB a proposed alternative rule. The Coalition contends that the draft proposed rule duplicates the federal program and goes beyond the federal program with limited environmental benefit. The Coalition proposes that a comprehensive state policy concerning wetland resources and regulation of those resources should be developed, and that IDEM should be directed to develop rules that match that policy. Mr. Kane indicated that the Coalition is divided on the question of whether the state should protect isolated wetlands. Mr. Kane noted that the Association of Indiana Counties and the Indiana Association of Cities and Towns, both Coalition support groups, agree with the philosophy, goals, and concerns of the Coalition, but provide no monetary support. Mr. Kane commented on: (1) state jurisdiction over certain wetlands; (2) enforcement of wetlands regulations; (3) wetlands mitigation; (4) the Coalition's alternative draft rule; (5) overlap of regulations concerning wetlands; and (6) the redundancy the Coalition sees in the IDEM draft rule.

Mark Thornburg, Indiana Farm Bureau (Bureau), questioned the scope of IDEM's regulatory authority. The Bureau believes regulation should apply only if there is a threat of pollution of actual waters of the state. Many farmers' wetlands are already under regulation by the Natural Resources Conservation Service (NRCS), but there have been conflicting interpretations between NRCS and IDEM. The Bureau would like to see deference to NRCS regulation of wetlands, a reexamination of the meaning of "waters" under Indiana statute, and a codification of wetlands mitigation. The Bureau does not want regulation to hamper normal farming activities.

Lynn Dennis and Dr. John Shuey spoke on behalf of the Nature Conservancy, which wants regulation to protect isolated wetlands, thereby furthering the Nature Conservancy's goal of protecting biodiversity.

Dorreen Carey, Environmental Affairs Coordinator, City of Gary, discussed the city's concerns that proposed regulations will impede development in the city, particularly development of the Gary Chicago Airport. The regulation as proposed would prevent strategic planning and implementation of the airport expansion program. The city proposes that wetland preservation, management, and mitigation should be addressed through a local or regional comprehensive plan.

Bill Baranek, Indiana Environmental Institute, discussed the deliberations of a working group seeking to develop recommendations on a comprehensive wetlands policy for the state that would take into account: (1) overlap of wetland regulation among governmental bodies; (2) the differences in value among wetlands; (3) the need to generate a net gain in valuable wetlands; (4) the need to create incentives to create wetlands; and (5) the need to not only save current wetlands, but to create wetlands in certain areas.

Sen. Gard suggested that: (1) the working group should consider a wetlands conservation plan developed in 1994; (2) other states' policies should be reviewed; (3) an analysis should be done of gaps among governmental entities in the various aspects of wetlands regulation; and (4) the working group should report its conclusions to the EQSC.

**Water Data Task Force (WDTF) Issues.** Art Umble provided a summary of the activities of a working group assembled to focus the questions for WDTF deliberation. When the Clean Water Act took effect in the early 1970's, the intent was to look at overall ambient water quality standards. However, the focus soon turned to effluent quality standards and related data. More recently, attention has reverted to ambient standards. There has been uncertainty concerning what data means, how it is collected, and how it is analyzed, used, and developed. Greater consideration of data related to ambient standards is needed to evaluate the appropriate designated use for a water body. The WDTF must draw a distinction between data and the criteria drawn from data. It must be determined what data is to be collected, how the data is to be managed, and how the data is to be analyzed. The WDTF must recognize that there is always an inherent degree of uncertainty in data, and consider how much uncertainty is acceptable. The level of uncertainty can be reduced by the restructuring of resources for data collection, and the



reduced uncertainty results in data more reliably used in decision making.

Mr. Beranek addressed the precision of data needed to make certain decisions about water quality. It would be useful for the WDTF to divide the issue into consideration of which data is needed for surface water quality decisions made as part of regulation (e.g., NPDES permit), and which data is needed for more strategic purposes (e.g., nutrient management). The WDTF should not specify what is needed, but should give options with respect to increased resources or reprioritization of resources. Mr. Beranek discussed the distinctions among circumstances where data is needed for decision making, and those where data is not needed.

Glenn Pratt strongly supported the need for and the work of the WDTF. He likened this effort to that previously carried out under the guidance of then Lt. Gov. O'Bannon concerning water program needs. He noted that industry and municipalities agreed to pay higher permit fees to obtain needed state staffing to implement a rational water program. While the fees were increased, most of the staff has not been brought on board. He emphasized how the program has changed and the resulting need to gather and interpret new data.

### **Third Meeting - September 28, 2001**

**Commissioner's Report.** Commissioner Kaplan gave her report on the current status of IDEM activities.

Sen. Gard requested an overview of the status of the various rulemaking efforts by the environmental rulemaking boards. Commissioner Kaplan and Nancy King of IDEM provided an overview.

**Environmental Crimes Issues.** Sen. Kenley explained the environmental crimes issue that was the subject of SB 133 from the 2001 session of the General Assembly. SB 133 would eliminate the provision that establishes as a Class D felony an intentional, knowing, or reckless violation of: (1) a rule or standard adopted by one of the environmental rulemaking boards; or (2) a determination, a permit, or an order made or issued by the commissioner under environmental management laws. Sen. Kenley believes there are potential constitutional infirmities in the current law with respect to delegation of legislative authority and vagueness. He believes the best policy is for the General Assembly to determine which violations constitute felonies (or other levels of offense) rather than authorizing an administrative agency to do so. This policy would eliminate the potential for a constitutional challenge to the statute. Sen. Kenley suggested that the best way to effectuate the proposed change would be to establish a committee comprised of legislators, an appellate judge, and representatives from IDEM, local government, environmental interests, and the regulated community.

Sen. Kenley responded to questions from the council concerning: (1) the extent to which the current law has caused problems; (2) other states' laws; (3) the need under the proposal to place specific standards for offenses in statutes; (4) the effect on violations established by local

ordinances; and (5) the disposition of EPA toward the proposal.

Commissioner Kaplan indicated that felony charges have been filed under the statutory provisions in issue. She commented that federal law delegates certain responsibilities to the state, and that she would want to be sure that the proposal would not conflict with those responsibilities.

Kerry Manders commented that to the extent the proposal impacts illegal dumping, the goal should be to make it easier for communities to maintain their integrity and their ability to combat illegal dumping.

Glenn Pratt described his involvement at the state and federal levels with the first criminal cases that were filed. He stressed the importance of criminal prosecutions in the face of companies with the attitude that legal costs and fines are cheaper than environmental compliance. He does not think the current process has been abused, but believes the process described for preparing a bill on the proposal would be useful. The focus should be on deliberate, premeditated violations.

**Septic Systems Issues.** Sen. Gard reviewed EQSC activity in 2000 on septic systems issues. She described the purpose of the current review to consider what changes might be made to bills on septic issues that did not pass in the 2001 session of the General Assembly to improve the chances for passage.

Alan Dunn, Indiana State Department of Health (ISDH), discussed recessional moraines in northeast Indiana. The moraines affect several counties and consist of very dense soil with poor permeability that is unsuitable for septic systems. ISDH has been researching the subtle differences among various types of soils as they relate to septic system suitability, and has provided relevant information to county health departments. He indicated that much work remains to be done and that technology has not yet led to solutions that will solve all septic system problems. Mr. Dunn indicated that ISDH supports and has approved the use of constructed wetlands septic systems, and has urged installers of septic systems to provide information on operation and maintenance of the systems to property owners. He stated that ISDH is looking for ways to make the permitting process less burdensome, and is open to ideas for change.

Sen. Gard stated that the biggest problem with respect to septic systems is funding. Lynn Dennis, Indiana Chapter of the Nature Conservancy, supported any education, inspection, and maintenance initiatives. Commissioner Kaplan stated that IDEM has been looking closely at constructed wetlands septic systems and will review whether IDEM has any ongoing problems with the use of this type of system.

Loren Robertson, Administrator of the Allen County Department of Health, described the frustrations of having limited answers to septic system problems that are sometimes severe. The problems in Allen County are exacerbated by the moraine soils. He supported the septic systems

bills considered in the 2001 session as parts of a solution to the problem. His agency is working with Purdue University to explore alternatives for resolution of septic system problems in Allen County.

Mayor Goffinet commented that based on his experience in Tell City and Perry County, the only viable solution is to use a sewage treatment facility, and that additional funding options are needed. Rep. Weinzapfel expressed his concern, given the septic systems problems relating to existing properties, for increasing funding options that would encourage the installation of additional septic systems.

Bill Grant, LaGrange County, described the often inaccurate historical views on the use of septic systems, and the recent efforts in his county to expand the use of constructed wetlands septic systems. He emphasized that rural areas need assistance, that there are potential solutions, and that decentralized solutions can be accomplished at the lowest cost.

Pam Thevenow, Marion County Health Department, described the difficulty in getting neighborhood support for costly sewer connections. She supports any efforts to make sewer connections affordable, and believes a review of installer certification and licensing and an examination of the limitation of the issuance of septic system permits are appropriate.

Glenn Pratt endorsed the establishment of septic districts to address rural areas, and the allowance of tax credits. In major metropolitan areas, the credits should be authorized for connections to sewers where the septic systems create a health problem in areas contiguous to the "old city".

**Outdoor Lighting Issues.** Kevin Fleming presented the views of the Indiana Council on Outdoor Lighting Education. Misdirected or excessively bright light wastes energy, creates pollutants for no benefit, destroys flora and fauna, and intrudes on the enjoyment of property. Poorly designed lighting for roads leads to poor visibility and unsafe conditions. Some locations, such as gas stations, are lighted at many multiples beyond the light needed. Mr. Fleming stated that studies have failed to confirm any positive security results in areas of increased lighting. He urged that there should be: (1) standards for light trespass and for direction of light from high intensity light fixtures; (2) a model lighting ordinance developed for use by local governments; (3) limitation of accident liability if lighting meets standards; (4) limitation of liability for unlighted businesses that are closed; (5) enhanced funding for local governments that adopt light ordinances; (6) limitation of lighting that impinges on academic astronomical observations; (7) educational resources on light pollution; (8) elimination of unnecessary illumination of reflective road signs; (9) more efficient lighting on road medians; (10) full cutoff lighting priced comparably with non-full cutoff lighting; and (11) disclaimers on lighting sold as security lighting.

Mr. Fleming stated that the Illuminating Engineering Society of North America has recommended full cutoff lighting for road lighting fixtures, but the Indiana Department of

Transportation has not adopted this standard. Mr. Fleming noted that: (1) the Marion County Sheriff's Department accident report form includes no statement of lighting conditions at the time of a crime incident; (2) the department does not train to distinguish good lighting from poor lighting; (3) his emphasis is on better lighting for all purposes; and (4) he has no opposition to standard Christmas lighting.

#### **Fourth Meeting - October 15, 2001**

**State Revolving Fund Issues.** Andrew Lausted, EPA State Revolving Fund (SRF) Specialist, gave a brief history of the SRF programs and described their operations. EPA conducts annual reviews of and reports on the environmental and financial aspects of Indiana's combined SRF programs. The most recently completed review covered calendar year 2000. The review revealed a record program pace. Mr. Lausted addressed concerns identified in the 2000 report, including: (1) duplication of effort in accounting functions for the programs by both IDEM and the Indiana State Budget Agency (ISBA); and (2) significant delays in the implementation of the state drinking water SRF set aside work plans. EPA encouraged the state to use the wastewater SRF in the state watershed cleanup effort.

Mr. Lausted: (1) stated that the state receives a nonpoint source grant of approximately \$5 million per year for locating the source of pollution; (2) addressed the amounts of grants allocated to set aside programs, the extent to which the grants were used for set aside projects, and IDEM accounting reports and administrative costs; (3) stated that federal money has been made available for IDEM contracts for administration of SRF programs, but has not yet been used by the state; (4) addressed the charging of salaries within IDEM to the correct accounts; (5) cited Minnesota as a good example of program accounting practices and as a leader in the extent of use of nonpoint source loans; (6) noted that no state has a single environmental finance authority; (7) stated that wastewater SRF money can be used to address nonpoint source pollution concerns and septic systems problems; (8) described his understanding of some of the reasons for delays in the approval of state contracts under the SRF programs; (9) addressed the windows of opportunity for use of the set aside funds; and (10) stated that Indiana is understaffed in the SRF programs.

Sen. Gard expressed concern that some of the same issues appearing in the 1999 report also appear in the 2000 report. She commented that there is a need to increase funding in the nonpoint source project area, but that the accounting and financial management issues must be addressed first, including the adoption of a comprehensive plan.

Commissioner Kaplan addressed: (1) the progress made in recent years through increased coordination between IDEM and ISBA; (2) contract delays; (3) the state contract approval process; (4) the correction of the charging of staff compensation; (5) the reporting from IDEM to ISBA; (6) IDEM's work with ISBA to maximize accounting efficiency and use of set aside funds; (7) use of SRF program money by political subdivisions but not by private entities; and (8) IDEM's efforts to encourage and increase participation in the SRF programs by political

subdivisions.

Sen. Gard expressed concern about potentially losing set aside funds that go unused. Mr. Lausted indicated that although unused set aside funds currently revert to the SRF program loan pool, allowing funds to go unused can affect the amounts of future capitalization grants.

Tim Method, IDEM, elaborated on the various aspects of the set aside programs and on IDEM contracting under those programs. Rich Emery, ISBA, commented that the ISBA believes it has the expertise and resources to administer the accounting functions of the SRF programs.

Glenn Pratt commented that it is necessary to look at the SRF programs in a comprehensive manner. Indianapolis has needed more data for development of its control plan, and it was anticipated earlier this year that a study plan would be developed to collect data in such areas as combined sewer overflow, septic systems, and farm runoff. No such plan has been developed. It is inappropriate to spend in excess of \$1 billion on combined sewer overflow without properly addressing septic systems issues. Comprehensive evaluations are needed, and he does not see progress.

**Technical Assistance Issues.** Jim Mahern, IDEM, discussed the status of the IDEM technical assistance program and current efforts to meet IDEM's goal of assisting regulated entities in achieving compliance and promoting cooperation between IDEM and regulated entities. Mr. Mahern described the various ways in which the program provides assistance and the specific compliance assistance tools available to the public. IDEM received an award this year from the Council of State Governments for its Childcare 5-Star Environmental Recognition Programs. He noted that technical assistance focuses on particular agricultural, commercial, and industrial activities, including the recently added activities of metal casting and auto salvage.

Mr. Mahern: (1) described the extensive procedures in place for maintaining client confidentiality; (2) described the manner in which the technical assistance program addresses inquiries from entities that are not in compliance; (3) addressed the number of inquiries received from the agricultural sector; (4) indicated the most common subjects of inquiries; (5) indicated that information on financial assistance is also provided as part of the program; (6) stated that grants of immunity are not given; (7) stated that a system is in place for follow-up after advice is given; and (8) stated that surveys are used to get feedback on program effectiveness.

Terry Streuh , Dr. Dave McKennis, and Dr. Ron Turco discussed Purdue University's technical assistance program. Dr. McKennis described operations in the economic development and manufacturing sectors on issues such as productivity, product design, and environmental health and safety. Information provided focuses on technical issues rather than compliance issues. Examples of issues addressed are odor control, wastewater discharge, and air quality in enclosed manufacturing facilities. Dr. Turco is the director of Purdue University's Environmental Science and Engineering Institute, which brings together resources in the university's environmental science areas. The Institute develops best management practices in the areas of watershed

management and assessment, global climate change, risk assessment, and remediation of contamination.

Dr. Lynn Corson, director of the Indiana Clean Manufacturing Technology and Safe Materials Institute (CMTI), discussed CMTI's operations serving primarily small manufacturers and focusing on air emissions problems. Dr. Corson gave examples of: (1) the types of manufacturers assisted by the CMTI in the reduction of environmental wastes; (2) the cost effectiveness of the program; and (3) the amount of pollutant reductions achieved.

Sen. Gard summarized the technical assistance issues as follows:

1. Are we meeting technical assistance needs in the best possible and least threatening way?
2. Where do technical assistance programs overlap?
3. What is the best way to direct those in need to the right technical assistance resources?
4. How do we best use the expertise of state supported universities?

**Recycling Issues.** Tim Neese, Administrator of the Solid Waste Management District in Elkhart County, discussed recycling issues. The district is funded from landfill tipping fees. Recycling success, measured by diversion of waste from landfills, is gauged by survey responses from the private sector. The district sponsors household hazardous waste collection. Mr. Neese questions the need for mandatory recycling, but emphasizes the need for record keeping.

Mr. Neese: (1) described how he maintains both cost control and efficiency in the district; (2) indicated that the district does not have mandatory recycling, but instead uses curbside recycling in the City of Elkhart and numerous drop-off sites in the county; (3) stated that improper dumping of materials that cannot be recycled is not a big problem in the district; (4) addressed current markets for recycled materials; (5) stated that there is one public landfill and one private landfill in the county; (6) noted that the district does not have a Toxaway Program, but that the hazardous waste dropoff program is effective; (7) described the ten items subject to recycling in the district and the manner in which recycling is addressed in schools and other governmental entities; (8) addressed the incentives at work in the district for recycling; (9) commented on the importance of public education on the processing costs for recycled materials; and (10) commented on the useful lives of landfills.

Mr. Mahern discussed state recycling issues, noting that solid waste management is addressed by the state through IDEM, the Indiana Department of Commerce (IDOC), and the Indiana Department of Administration (IDOA). Much of the current state program was enacted in Public Law 10-1990, which established solid waste management goals, local government tools to deal with solid waste, and a broad foundation of state resources. The solid waste reduction goals are not enforceable requirements. Mr. Mahern described the means by which progress toward the goals is measured, the diversion rate (determined for 2000 to be 35%), and the various state grant programs and other programs related to solid waste reduction.

Sarah Carney, IDOC, explained IDOC's involvement in recycling efforts. IDOC works with

Indiana businesses to build markets for recyclables, promote use of recycled-content products, and encourage reduction of waste. Ms. Carney described the results of the Recycling Economic Information Project, showing economic impacts from twenty-six industry categories of recycling and reuse. She also described the IDOC technical assistance and financial assistance programs, the recyclable material market directory, and the "Buy Recycled" program.

Janet Fox Neltner, IDOA, discussed "Waste Reduction, Recycling and Greening Indiana's Government." State government recycles numerous items at the Indiana Government Center and elsewhere in the state. A significant portion of state purchases include recycled-content items and significant amounts of material have been diverted from disposal. A Greening Executive Order was signed by the Governor in 1999, which provides for a comprehensive environmental plan, energy conservation, and pollution prevention.

Rep. Mangus discussed recycling issues, commenting on: (1) the imposition of a "mandatory recycling" fee by the Solid Waste Management District in St. Joseph County after the District spent on voluntary recycling money generated through tipping fees; (2) an IDEM report that he considered to be unreliable concerning recyclable materials handled by recycling companies in the state; (3) a 1997 Hoosier State Press Association newsprint recycling survey that he considered to be inaccurate concerning claims that many newspapers exclusively used recycled newsprint; and (4) his belief that it is inappropriate that the St. Joseph County Commissioners approved the "mandatory recycling" fee even though they do not have a recycling program in place in the courthouse or other county buildings.

Rep. Mangus made the following recommendations:

1. If a solid waste management district proposes to impose a curbside recycling fee in the unincorporated area of a county, the proposal should be subject to approval by the county council.
2. A municipality that does not use a landfill in a particular solid waste management district for disposal of municipal solid waste, and therefore does not pay tipping fees to the landfill, should not have the right to benefits from that district. Similarly, a municipality that disposes of municipal solid waste at an out of state landfill, and therefore does not pay any solid waste fees to the state, should not have the right to benefits from the state that relate to solid waste management.
3. A local government unit should not be permitted to institute recycling in the unit if the unit does not recycle in its own government buildings.
4. A definition should be developed to determine what percentage of recycled material must be incorporated for a product to be considered a recycled product.

Steve Key, Hoosier State Press Association, commented on Rep. Mangus' concern about the use of glossy paper by newspapers. Paper producing companies are in the process of retooling to address the problem. The percentage of recycled fiber content in newsprint has been steadily increasing in recent years.

Sen. Gard commented that she would like to see data on the percentage of waste materials collected for recycling that instead goes to landfills. Mark Davis, Executive Director of the Monroe County Solid Waste Management District, commented that over 90% of recycled material collected in his district is actually recycled.

### **Fifth Meeting - October 30, 2001**

**Commissioner's Report.** Commissioner Kaplan gave her report on the current status of IDEM activities and provided information to the council on administratively extended NPDES permits and the technical, legal, and policy issues involved in permit review.

**Air Issues.** Janet McCabe, IDEM, discussed: (1) the identification of "hazardous air pollutants" (HAP) under the Clean Air Act; (2) the manner in which Indiana addresses air toxics under the federal program; (3) the use of air toxic emissions data; (4) the Indiana Tox Watch air monitoring program; (5) data and cancer benchmarks under the National-Scale Air Toxics Assessment; (6) the Indiana Toxics Release Inventory; (7) the use of emission information for air quality planning; (8) the reasons for adding air toxics reporting to the proposed emission reporting rule of the Air Pollution Control Board and related policy issues; (9) the pollution sources to which the proposed rule applies and the reporting level under the proposed rule; (10) the difficulties and costs associated with estimation of air toxic emissions; (11) other states' air toxics reporting; and (12) the status of the proposed rule.

Bernie Paul, Eli Lilly and Company, discussed the proposed emission reporting rule on behalf of the Indiana Manufacturing Association's Air Subcommittee and the Indiana Chamber of Commerce's Air Subcommittee. Mr. Paul expressed general support for collection, management, and use of emissions data by IDEM, subject to certain concerns. He discussed the history of emission reporting, the current rule on the subject, and the changes under the proposed rule. He expressed concerns that the proposed rule: (1) needs to protect confidentiality of information collected; (2) addresses too many objectives; (3) is not cost effective because of its scope, detail, and frequency of data collection; (4) results in duplication with existing data reporting systems; (5) results in excessive costs to industry; (6) includes a HAP emission reporting list too broad for every source in the state; (7) includes too few emissions calculation factors; and (8) includes a reporting threshold that is too small (20 pounds/year). Mr. Paul suggested that the concerns could be addressed by revising the proposed rule to require a request and justification from IDEM to obtain additional emissions information, and by establishing an Air Toxics Advisory Group to work with IDEM staff.

Mike Brown, American Electric Power, discussed the proposed emission reporting rule on behalf of the Indiana Electric Utility Air Work Group (IEUAWG). IEUAWG does not object to current air emissions reporting requirements, but has concerns that the proposed rule: (1) is overly broad with respect to HAP reporting; (2) fails to capture data on mobile sources, which account for the majority of HAP emitters; (3) is not consistent with the Clean Air Act approach of correlating HAP emissions reporting to public health hazards; (4) is redundant with other reporting



requirements; (5) results in excessive reporting burdens and costs; and (6) fails to resolve technical issues in reporting. IEUAWG would like the proposed rule to be withdrawn until EPA acts on its Consolidated Emission Reporting Rule. If the proposed rule is not withdrawn, IEUAWG would like a cost analysis to be performed, and revisions to cause the proposed rule to be more targeted, more focused, based on risk, and more reasonable with respect to reporting thresholds.

Ms. McCabe responded to concerns of council members on various aspects of the proposed rule and IDEM's ability to carry out its responsibilities under the rule.

Rep. Herrell expressed concerns about the costs to industry of the reporting requirements under the proposed rule.

**EQSC Recommendations.** The EQSC discussed and approved by vote recommendations on each of the subject areas considered by the EQSC this year.

## **V. COMMITTEE RECOMMENDATIONS**

The Committee made the following recommendations:

### **1. Air Issues**

The Indiana Department of Environmental Management (IDEM) should establish a working group to consider issues under the proposed emission reporting rule of the Air Pollution Control Board. The working group should include representatives from the regulated community, environmental organizations, the Indiana Department of Commerce (IDC), and the Indiana State Department of Health (ISDH). Before May 1, 2002, the working group should complete its work and submit a report to the EQSC.

### **2. Environmental Crimes**

The General Assembly should establish an Environmental Crime Task Force ("Task Force") to prepare a report to the General Assembly, the EQSC, and the Governor before January 1, 2005 recommending, if determined appropriate by the Task Force, an appropriate Indiana environmental crime statute. The Task Force should include legislators, an appellate judge, and representatives from IDEM, local government, environmental interests, and the regulated community. The Task Force should consider the full range of issues dealing with environmental law.

The report of the Task Force should contain:

- (1) A summary of environmental crime statutes of other states.
- (2) A summary of requirements of federal environmental programs delegated to states.
- (3) A summary of federal criminal sentencing guidelines.

- (4) Recommendations about which Indiana environmental law violations should be a misdemeanor, a Class D felony, or another class of felony.
- (5) If determined appropriate by the Task Force, recommended legislation including a set of specific statutory standards for determining criminal violations.

### **3. Wetlands**

The General Assembly should establish a Wetland Study Committee with members including heads of key state agencies and stakeholder representatives. The Committee should:

- (1) Recommend a framework for overall state policy on wetlands to implement the 1996 Indiana Wetland Conservation Plan with goals, objectives, and responsibilities, including recommendations on:
  - (a) as a long-term strategy, the types and functions of wetlands that are valued in particular geographic areas; and
  - (b) the means for restoration, maintenance, and protection of wetlands, including the agencies to be involved and the incentives to be offered.
- (2) Identify whether sections of the Water Pollution Control Board's proposed rules on wetlands and proposed rules under Section 401 of the Clean Water Act are redundant by virtue of existing state or federal programs. This is to be accomplished with the goal of eliminating inefficient use of limited state agency resources and to free up agency personnel to better implement other programs.
- (3) Recommend the appropriate role and components of banking programs as a part of a mitigation rule to foster private initiatives to restore wetlands in the context of a rational state-wide wetland strategy.
- (4) Suggest a statutory definition of "private pond" as used in the definition of "waters" in IC 13-11-2-265, in light of the decision in Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers, 531 U.S. 159 (2001).
- (5) Suggest a statutory definition of "waters of the state".

### **4. State Revolving Loan Fund**

A. The recommendations in the U.S. Environmental Protection Agency's Fiscal Year 2000 Annual Review of the Wastewater State Revolving Fund Program and the Drinking Water State Revolving Fund Program (Attachment 1) should be implemented.

B. The Wastewater State Revolving Loan Fund potential recipient list should be expanded to allow non-point source pollution controls. However, before expanding opportunities for grants and loans to parties wishing to address non-point source pollution, IDEM and the Indiana Department of Natural Resources should, with public involvement, jointly establish written criteria for setting priorities about approving projects for explicit categories of non-point source pollution.

C. IDEM should take action as soon as possible to release set-aside funds to assist municipalities

in complying with new Safe Drinking Water Act regulatory mandates.

## **5. Septic Systems**

A. The General Assembly should create statutory authority for local governments to approve septic system management districts to assure that septic systems are managed appropriately in the districts and to provide a funding mechanism for counties to assist in correcting septic system problems.

B. Research should be done on the effectiveness of different types of septic system designs.

C. IDEM and ISDH should report to the EQSC on means to expedite approval of use of experimental on-site sewage treatment technologies such as constructed wetlands. The approval should include a special provision to address corrective measures should the system fail.

D. Local health departments should establish programs for education on the maintenance of septic systems.

## **6. State Funded Technical Assistance**

A. IDEM and IDC together should prepare and maintain a comprehensive inventory of all state funded technical assistance programs and applied research programs with a description of the level of funding and the focus of efforts.

B. The EQSC should explore ways to assure that state-funded technical assistance efforts are coordinated and are periodically evaluated for effectiveness.

C. Means to better utilize the resources of state funded universities should be explored.

## **7. Recycling**

A municipality should be permitted to institute curbside recycling only if the municipality has a recycling program that applies to all facilities owned or operated by the municipality.

## **8. Water Data Task Force**

The Water Data Task Force (WDTF) should divide its consideration between policy decisions that require information to achieve IDEM regulatory mandates and policy decisions that require information to achieve other water quality objectives.

(1) For the regulatory mandates, the broad categories of issues requiring data are:

(a) identifying surface waters that are impaired for a given parameter and those that are not impaired for the parameter;

- (b) finding and eliminating sources of an impairment; and
  - (c) establishing and assuring compliance with permit limits for intentional discharges.
- (2) The WDTF should ask the following of the regulatory mandates:
- (a) What are the quality and character of the data required for each IDEM policy decision in these programs?
  - (b) How can the data of other agencies and sources of information be best used for each of the three program areas?
  - (c) Where is it critical that the data be collected by IDEM and where could other parties become an integral part of data collection for regulatory purposes?
- (3) For both the regulatory mandates and the other IDEM water protection initiatives, the WDTF should ask:
- (a) How can the IDEM Office of Water Quality (OWQ) be organized to make the best use of data collected from its staff and others and of resources devoted to data collection?
  - (b) How can efforts of other data sources be coordinated better to meet the needs of the OWQ?
  - (c) Is it of value to create and support a single position at IDEM to be knowledgeable about the data needs of all OWQ programs and the data collection capabilities of all programs (and other sources) and have the authority to coordinate all IDEM data collection efforts to maximize efficiency?
  - (d) What value would be achieved if more resources were devoted to surface water data collection, management, and analysis in each OWQ program area?

## **9. Outdoor Lighting**

The Governor should establish an Outdoor Lighting Task Force ("Task Force") comprised of representatives of all stakeholders to review existing model municipal ordinances and to develop a model ordinance for local governments to consider. The Task Force should make recommendations for state policy concerning outdoor lighting. Stakeholders should include representatives of public interest groups, astronomers, public safety officials, municipal government, energy utilities, retail, industry, experts on lighting, and other businesses. The Task Force should report before November 1, 2002, to the General Assembly, the EQSC, and the Governor.

## **EQSC Witness List**

Bill Beranek, President, Indiana Environmental Institute and Chair of the Marion County Local  
Emergency Planning Commission  
Mike Brown, American Electric Power  
Dorreen Carey, City of Gary  
Sarah Carney, Indiana Department of Commerce  
Pat Carroll, Branch Chief, Drinking Water Branch, IDEM Office of Water Management  
Dr. Lynn Corson, Indiana Clean Manufacturing Technology and Safe Materials Institute  
Mark Davis, Monroe County Solid Waste Management District  
Lynn Dennis, Nature Conservancy  
Alan Dunn, Indiana State Department of Health  
Rich Emery, Indiana State Budget Agency  
Kevin Fleming, Indiana Council on Outdoor Lighting Education  
Bill Grant, LaGrange County  
Larry Kane, Bingham Summers Welsh & Spilman  
Lori F. Kaplan, IDEM Commissioner  
Senator Luke Kenley  
Steve Key, Hoosier State Press Association  
Andrew Lausted, U.S. Environmental Protection Agency  
Roger Letterman, IDEM  
Jim Mahern, IDEM  
Janet McCabe, IDEM  
Dr. Dave McKennis, Purdue University  
Tim Method, IDEM Deputy Commissioner  
Tim Neese, Elkhart County Solid Waste Management District  
Janet Fox Neltner, Indiana Department of Administration  
Bernie Paul, Eli Lilly and Company  
Glenn Pratt  
James Robb, IDEM  
Loren Robertson, Allen County Department of Health  
Dr. John Shuey, Nature Conservancy  
Terry Streuh, Purdue University  
Pam Thevenow, Marion County Health Department  
Mark Thornburg, Indiana Farm Bureau  
Dr. Ron Turco, Purdue University  
Art Umble  
Cyndi Wagner, IDEM